Hamm v. PMI Employee Leasing and Comprehensive Insurance Solutions
Case 1D13-4895, 1st DCA 2014

Facts - The minor child of the decedent employee appealed an order from the Judge of Compensation Claims (JCC) denying her death benefits. The Employer/Carrier (E/C) accepted the employee's death as a compensable and subsequently filed an emergency motion seeking to determine the beneficiaries of the death benefits. No Petition for Benefits (PFB) or other claim for benefits was pending when the E/C filed its motion.

Holding - Because no Petition or other claim for benefits was pending at the time, the Court determined that the JCC lacked jurisdiction to address the motion, and sent it back to the JCC to dismiss the motion for lack of jurisdiction. The Court cited the case of *Polk County v. Sofka*, 702 So. 2d 1243, 1245 (Fla. 1997) which held that 'the parties cannot stipulate to jurisdiction over the subject matter where none exists,' and '[c]ourts are bound to take notice of the limits of their authority and if want of jurisdiction appears at any state of the proceedings, original or appellate, the court should notice the defect and enter an appropriate order.'

The Court likened this situation to the dismissal of fraud cases where the JCC had no jurisdiction over the matter because there was no pending PFB filed by the claimant. As in those cases, the JCC in this case lacked jurisdiction to address death benefit entitlement on the E/C's motion where no individual had filed a claim requesting the payment of such benefits. The Court noted that the E/C, by its motion, was essentially requesting an advisory or declaratory opinion for which there is no provision in Chapter 440

Take Away – An E/C essentially has to deny a benefit in order to get something in front of the JCC. This is also illustrated in cases where a Judge will deny a carrier's

request for an IME when there is no Petition, because there is no “dispute” pending In those cases, in order to get an IME, the carrier would have to deny something first and then hope that the Claimant filed a Petition for Benefits, thereby creating jurisdiction for the JCC..

Southeast Milk/Zurich v. Fisher
Case 1D13-4411, 1st DCA 2014

Facts – The Claimant suffered a compensable injury when the door of his truck cab slammed into his left side. Subsequently he was restricted to light duty work, which the Employer made available where the Claimant would come in and watch safety videos. The Claimant did this for part of two nonconsecutive days and then stopped coming to work. On at least one day of absence, he did not call in as required by the employer’s policy that indicated a “no-call no show” could result in termination. The Employer considered Claimant’s absences to be unauthorized and terminated him for that reason.

The JCC awarded the Claimant temporary partial disability benefits for a closed period of time, even though there was evidence that the Claimant was terminated from his employment for what may have been misconduct as defined by section 440.02(18). The E/C appealed, arguing that the JCC erred when he declined to determine whether the Claimant had been discharged for misconduct, given that section 440.15(4)(e) provides that TPD benefits are not payable if termination is based on misconduct.

Holding – The Court agreed with the E/C and sent the case back to the JCC to determine whether the Claimant was terminated for misconduct as defined by section 440.02(18), noting that the E/C had raised a dispositive defense based on an allegation of statutory misconduct.

Take-Away – Temporary partial disability benefits are not payable when a claimant is terminated for misconduct as defined in 440.02(18), as long as the defense is raised in a timely manner.

Cabrera v. Outdoor Empire Inc. and FCCI Insurance Co.
Case 1D13-5235, 1st DCA 2014

Facts – The unrepresented Claimant appealed the JCC's order that found that the Claimant had fully settled his two workers' compensation claims with the E/C and was, therefore, entitled to no further benefits under workers' compensation.

The parties attended a mediation where the Claimant was represented by counsel – at that time. An interpreter was present at the mediation to assist the Claimant, whose primary language is Spanish. At the conclusion of mediation, the parties reached a settlement agreement for $165,000, inclusive of an attorney fees and costs. This settlement agreement was memorialized by written documents, each of which bore the Claimant's signature. Shortly after this settlement agreement was reached, and after the documents memorializing same were signed, the Claimant expressed displeasure with, among other things, the amount of the settlement, the manner in which it was negotiated, and the means by which the settlement checks would be processed.

Several hearings were held regarding the Claimant's multiple post-settlement grievances. Significantly, at the evidentiary hearing held to determine whether Claimant in fact settled his workers' compensation claims, the mediator, the interpreter, and Claimant's counsel (who had by then withdrawn from representation of Claimant) all testified. Each of them testified that the negotiations at mediation and the resulting settlement included both of the Claimant's dates of accidents and that this had been discussed with Claimant repeatedly. The E/C introduced the settlement documents into evidence which showed an agreement whereby the E/C promised to pay Claimant $165, 000 to completely settle and extinguish "all" and "any" workers' compensation claims based on accidents and injuries suffered by Claimant while working for the Employer. Claimant testified that he signed these documents, and this was verified by Claimant's counsel and the interpreter. The Claimant alleged that he was a victim of a "dirty trick," because he did not intend to settle both dates of his accident.

After the JCC found that the Claimant fully and completely settled both his dates of accident, Claimant alleged—for the first time—that the signatures appearing on the operative settlement documents were not his own. The JCC advised the Claimant that the time to have raised this issue was during the evidentiary hearing on the

issue of settlement. The Claimant appealed, arguing that evidence supports his argument that he did not intend to settle both dates of accident with the E/C.

Holding - The Court pointed out that it will never reverse an order of lower tribunal merely because evidence supports the losing party's view of the case. It said that an abundance of evidence, including the testimony of the interpreter and the mediator, established that the settlement was intended to resolve all workplace accidents that the Claimant suffered or allegedly suffered while working for the Employer, as the settlement agreement documents contained express language resolving with finality "any" and "all" workers' compensation accidents suffered by Claimant while working for the Employer.

Relative to Claimant's assertions that he did not actually sign the operative settlement agreement documents, the Court dismissed that because the Claimant did not timely raise this argument. However, even if the Court had addressed that argument, it said that the
Claimant's own testimony, along with that of his attorney, the mediator, and the translator, establishes Claimant signed the settlement documents in question. Thus the Court refused to reverse the Judge's order.

Take Away – Make sure all your "I's" are dotted and your "t's" crossed in the settlement agreement. Being as detailed as possible in the settlement agreement can help avoid headaches down the road if the Claimant tries to back out of the settlement.